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September 27, 2018

**VIA, ELECTRONIC FILING**

The Honorable Jocelyn Boyd  
Chief Clerk and Administrator  
The Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

Re: • **Docket 2018-202-E**

Ms. Boyd:

These Comments are provided on behalf of Ecoplexus, Inc., (“Ecoplexus”), and the South Carolina Solar Business Alliance, Inc., (“SCSBA”). I respectfully request that the Commission consider these Comments in addition to the Comments that I e-filed with the Commission in this Docket, on September 20, 2018.

**The SCSBA and Ecoplexus’ Position**

SCSBA and Ecoplexus do not, in concept, oppose the idea of a limited waiver of normal procedures under the South Carolina Generator Interconnection Procedures (“SCGIP”) in order to facilitate broader participation by South Carolina solar projects in the CPRE program authorized under North Carolina H.B. 589.

However, as discussed in SCSBA/Ecoplexus’ September 20, 2018 letter filing, SCSBA and Ecoplexus continue to have significant concerns about proposal put forth by Duke in its June 19, 2018 filing (“the Waiver Proposal”). As discussed below, Duke is asking the Commission to waive key requirements of the SCGIP to allow the Company to more quickly and efficiently process interconnection requests for CPRE projects, while hundreds of other existing projects languish in Duke’s interconnection queues, long after they would have obtained interconnection if Duke were meeting its regulatory obligations. And Duke (also as discussed below) has strong incentives to give CPRE preferential treatment versus non-CPRE projects. There are significant questions about how the Waiver Proposal would allow Duke to operate, and what granting of Duke’s request would mean for other projects.

I. Background

There are important background facts that the Commission should consider in deciding how to act on the Waiver Proposal.

A. There are still unanswered questions about Duke's Waiver Proposal.

Although there has been significant dialogue between Duke, the Independent Administrator of the CPRE, and the solar industry about the mechanics of the CPRE interconnection studies, significant questions remain. There are several reasons for this. First, Duke's Waiver Proposal in South Carolina does not include clear procedures that would bind the Company in the absence of the SCGIP provisions it seeks exemption from. This is in contrast to its proposal in North Carolina, which set forth specific modifications to the North Carolina Interconnection Procedures applicable to the CPRE program.

ORS and SCSBA/ECoplexus have propounded discovery requests to Duke seeking clarification of numerous aspects of the Waiver Proposal. Duke has provided responses to ORS's requests (which SCSBA/ECoplexus have reviewed) but has not yet responded to SCSBA/ECoplexus' requests. Those responses are due on September 27, 2018, and SCSBA/ECoplexus respectfully request to supplement their comments after reviewing those responses.

But even with a complete and detailed description of the procedures Duke will follow under the Waiver Proposal, neither Duke, the solar industry, nor anyone else will have a good understanding of the impacts of the Waiver Proposal (if approved) unless and until we go through the process. Consequently (and as discussed below), any approval of the Waiver Proposal should be limited to Tranche 1 of CPRE. Duke should also be required to provide detailed information about its interconnection activities during and after administration of the CPRE.

B. Duke's Interconnection Queues Remain Severely Backlogged.

Interconnection study delays in DEC and DEP territory in South Carolina have become pervasive. Since adoption of the SCGIP in 2015, only a nominal number of interconnection agreements have been signed, while hundreds of projects are currently backlogged in the study process. These delays are inconsistent with the requirements set forth in the SCGIP and are in stark contrast to the experience of solar developers operating in SCE&G territory, where study delays have been kept to a minimum and compliance with the SCGIP has been the standard.

In Duke Energy's August 1, 2018 Interval Report provided to ORS, the company noted that the average System Impact Study is currently requiring 202 business days to complete. The SCGIP requirements for completion of System Impact Studies are 65 business days for transmission projects and 50 business days for distribution projects. The Interval Report also identifies 37 "A" Projects and 152 Interdependent Projects that are backlogged and have not yet received an Impact Study Agreement, as well as 4 "A" Projects that have been backlogged for over 540 days. Particularly telling is the fact that the Companies, at present, have only five projects in facility study – two of which have been pending in study for more than 450 days.

Additionally, In ORS's 2017 Distributed Energy Resource and Net Energy Metering Implementation report to this Commission, it is noted that Duke Energy had 0 MW of actual installed capacity and 0 MW of reserved capacity for meeting its Act 236 requirement of 53 MW. In contrast, SCE&G had 20.70 MW of actual installed capacity and 27.46 MW of reserved capacity. To date, Duke has suffered no repercussions from its failure to meet its obligations under the SCGIP.

C. Duke has Incentives to Discriminate in Favor of CPRE Projects.

Duke has clear obligations under federal and state law to treat all projects in its interconnection queues in a non-discriminatory matter. The federal Public Utility Regulatory Policies Act, 16 U.S.C. 824a-3 et seq. ("PURPA"), and implementing regulations require utilities to provide interconnection to Qualifying Facilities on a non-discriminatory basis. 16 U.S.C. § 824a-3(b), 18 CFR 292.306(a). This Commission also has an obligation under South Carolina law to remedy any "unreasonable discrimination" in the provision of services by a utility. S.C. Code Ann. § 57-27-850.

These legal obligations are especially important here because Duke has good reasons to prefer CPRE projects over non-CPRE projects. This is because Duke ultimately stands to own a significant proportion of the "winning" CPRE projects. NC HB 589 allows Duke and its affiliates to bid projects into CPRE, and for those Duke-sponsored projects to be awarded up to 30% of the winning PPAs. N.C.G.S. § 62-110.8(b)(4). In addition, Duke may acquire any number of projects from winning bidders, and in fact has established a separate class of bids designated as "asset acquisition proposals" (as opposed to Power Purchase Agreement Proposals). Such projects owned by Duke may ultimately make their way into the company's rate base and provide a return for Duke's shareholders. Non-CPRE projects, by contrast, are generally owned by independent power producers who may opt to sell their output to Duke pursuant to a PPA – an arrangement that does not provide the same financial benefits to Duke. Under the terms of the CPRE program, Duke also has dispatch and other rights with respect to CPRE projects that it may not have with non-CPRE projects. Because Duke has strong financial and other incentives to discriminate against non-CPRE projects in favor of CPRE projects, this Commission should be vigilant to ensure that discrimination does not take place.

Duke claims that because the proposed waiver applies only to CPRE projects, "Interconnection Customers that elect not to participate in the CPRE Program will therefore not be affected" by Duke's request. (Petition at 2). However, this claim cannot simply be taken at face value.

Duke states in the Waiver Proposal that it will not discriminate in favor of CPRE projects (and against non-CPRE projects) with respect to the allocation of cost responsibility for system upgrades. Petition at 11. However, it is not clear that Duke will not give preferential treatment to CPRE projects (i.e. allow them to "jump the queue") when it comes to study priority. As this Commission is aware, delays in the System Impact Study and Facilities Study process are the main causes of Duke's interconnection backlog. Allowing CPRE projects to proceed more quickly through that process—which Duke could accomplish by devoting additional company resources to the study of CPRE projects—would be a tremendous advantage for those projects and would be severely discriminatory.

ORS asked about the Company's proposed allocation of study resources to CPRE projects in its discovery requests, and Duke's answers are not necessarily encouraging. In response to ORS request 1-27(c), Duke represented that non-CPRE projects "will maintain their existing queue position priority," but will "be studied concurrently with the CPRE studies." Preserving existing queue priority would require that non-CPRE projects in queue ahead of the utility-sponsored queue number will be studied ahead of, not concurrently with, CPRE projects. Allocation of study resources is also a significant concern. Duke states that while it will hire "additional study engineers" to study any distribution-interconnection projects that are identified as potential CPRE winners, the Duke personnel that are currently responsible for studying non-CPRE transmission projects will also conduct the CPRE project studies. Duke Response to ORS request 1-30(b). Although ORS's requests ask Duke to "identify the resource allocation that will be used to ensure the SC state and FERC jurisdictional queues for non-participants moves forward if the petition is granted," Duke's discovery responses do not specify how it will allocate its resources to prevent further queue delays.

The fact that Duke will be diverting study resources away from the already-backlogged transmission queue to study CPRE projects shows that it is very possible the Waiver Proposal will negatively impact existing non-CPRE projects, and also raises the possibility of unreasonable discrimination against non-CPRE projects.<sup>1</sup>

Because of the strong potential for discrimination in favor of CPRE projects, the Commission should clarify Duke's obligation to respect and preserve the queue priority order of non-CPRE projects not only for cost allocation, but for purposes of allocating study resources. To ensure that Duke is meeting these obligations, it should also be required to provide detailed reports to the Commission on its handling of interconnection requests for both CPRE and non-CPRE projects.

II. The Commission should not Approve the Waiver Proposal Without Imposing Conditions to Prevent Discrimination and other Negative Impacts on Existing Projects.

Because of the concerns raised above, SCSBA/ECoplexus submit that the Waiver Proposal should not be approved without imposing the following conditions to reduce the risk of discrimination against non-CPRE projects:

1. Any waiver of the SCGIP should be limited to Tranche 1 of the CPRE. To the extent Duke may request waiver of the SCGIP for later tranches, Duke must provide further information to the Commission on how the proposed process worked in Tranche 1; other parties should be afforded opportunities for further discovery from Duke concerning Tranche 1; and Duke should be required to convene a stakeholder process in South Carolina (including ORS and SCSBA/ECoplexus) to discuss refinements to the process for later CPRE tranches.

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<sup>1</sup> SCSBA/ECoplexus acknowledge that because some projects currently in the interconnection queue will choose to become CPRE projects, it is reasonable to allocate some existing resources to CPRE projects. However, the Commission should ensure that such reallocation does not disadvantage non-CPRE projects.

2. The Commission should clarify Duke's obligation to treat non-CPRE projects in a nondiscriminatory manner, not only for cost allocation purposes but also for purposes of study priority. Specifically, Duke should be ordered to fairly and consistently allocate study resources between CPRE and non-CPRE projects (on a per-project or per-megawatt basis). Furthermore, Duke's obligation to allocate study resources in a non-discriminatory manner (as between CPRE and non-CPRE projects) must clearly apply not only during the proposed Grouping Study, but also in later phases of the interconnection process.
3. Duke should be required to provide detailed reporting of its interconnection work, especially with respect to CPRE projects. This should include:
  - a. Indicating in the semi-annual interconnection queue reports currently filed by Duke in Docket No. 2015-352-E which projects have been bid into CPRE (in what tranches), which projects were selected as CPRE winners, and which projects bid into CPRE but were not selected.
  - b. Modifying the quarterly report currently provided to ORS and the SCSBA pursuant to the February 26, 2016 Memorandum of Understanding approved by the Commission in Docket No. 2015-362-E, to provide aggregate statistics on CPRE and non-CPRE projects, including:
    - i. The actual allocation of FTEs and person-hours devoted to the processing of CPRE and non-CPRE projects (for the transmission and distribution queues), including on a per-project and per-megawatt basis;
    - ii. Information on Interconnection Study Intervals for System Impact Study and Facilities Study (of the kind currently reported) for CPRE versus non-CPRE projects; and
    - iii. Information on Interconnection Study Backlogs (of the kind currently reported) for CPRE versus non-CPRE projects.
    - iv. The number of CPRE versus non-CPRE projects that achieved each significant interconnection milestone (i.e. system impact study complete, facilities study complete, IA signed, interconnection achieved) during the reporting period.

Regards,  
**AUSTIN & ROGERS, P.A.**

/s/Richard L. Whitt,  
Richard L. Whitt,  
As counsel for Ecoplexus, Inc., and  
The South Carolina Solar Business Alliance, Inc.

RLW/cas  
cc: All Parties of Record, (via, electronic mail)